

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 93 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

UNION BANK OF INDIA

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Appearance:

MR VB GHARANIA, AGP for Petitioner

MR JT TRIVEDI with MS DEVYANI DAVE for Respondent No. 1

MR AJ SHASTRI for Respondent No. 9

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/11/97

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. J.T. Trivedi, learned advocate for respondent no.1 and Mr. A.J. Shastri, learned advocate for respondent nos 9 and 12. Rest of the respondents have been served in the Civil Application.

2. By consent of the Ld. A.G.P. and the learned advocates appearing for the rival parties, this matter is taken up for final disposal today itself.

3. This revision application is directed against the impugned judgment and order passed by the Civil Judge (S.D.), Veraval dated 14/8/1996 in Court Fee Reference No. 1 of 1992 in Special Civil Suit No. 3 of 1992 filed by the respondent no. 1 herein. The learned trial Judge rejected the Court Fee Reference which was directed against the respondent no.1 bank, who filed the suit in question on the basis of the advance which was sanctioned in favour of the respective defendants. The respondent no.1- bank canvassed various documents in form of securities in support of the claim in the suit. It also paid Court fees on the suit claim amounting to Rs. 1,49,90,044.19. According to the Court Fee Inspector, since the respondent no. 1- bank prayed for separate money decree against respective defendants, separate court fees were required to be paid. Reference in this connection was made to a decision in the case of Cotseeds Corporation v. Cotton Corporation reported in 1988 (2) G.L.R. 1021. The learned trial Judge after taking into consideration the submissions made on behalf of the rival parties held that the respondent no.1-bank in substance filed suit against defendant no.1 - society/association of whom defendant nos. 2 to 20 were the members and invoked the liability of the defendants to be joint and several as prayed in the plaint. The learned trial Judge came to the conclusion upon the peculiar facts and circumstances of the case that what the plaintiff prayed for in the relief was a decree against defendant no.1 for the total suit claim with a subsidiary relief as contained in paras. B and C of the plaint. Hence, he did not agree with the submissions flowing from the case of Cotseeds Corporation (supra). That was a case of clever drafting. The learned trial Judge has made reference to a decision of this Court in the case of Bank of India v. Pravinsinh Bhuvabha reported in 1994 (1) G.L.R. 643, AIR 1978 Punjab and Haryana 213, AIR 1932 Madras 731 and AIR 1952 Madras 53. Considering the facts of the case vis-a-vis the subject matter of the suit the learned trial Judge held that the respondent no.1-bank properly valued the suit and paid the maximum amount of court fees in the sum of Rs.15,000/-. He, therefore, rejected the Court Fee Reference.

4. The controversy which has been sought to be canvassed is one arising from the concept of clever drafting as appearing in the case of Cotseeds Corporation (supra) and as appearing in the case of Shamsher Singh v.

Rajinder Prasad and others reported in AIR 1973 SC 2384.

5. Here before this Court reference has been made to a decision in the case of State of Gujarat v. Bank of Baroda rendered by a Division Bench of this Court in 1997 (1) G.L.H. 43 where conflict between the decisions of two learned Judges was referred to the Division Bench of this Court. The Division Bench of this Court held that each item or transaction between the parties would not constitute a distinct subject or cause of action, where decree in substance was sought for on total amount and the cause of action was only one cause of action. In such a case bearing in mind the substance of the matter court fee would be payable on the aggregate amount of the claim in the suit. The Division Bench has also made reference to the aforesaid Supreme Court decision and has held that although mere cleverness in drafting plaint would not be allowed to stand in the way of court, but it is the substance itself which has to be looked into and the substance of such a matter would be the total amount involved in the suit. The total amount that was due from the debtor to the creditor and in such a case there was hardly any scope of restate in drafting.

In my opinion, the controversy has been set at rest by the Division Bench in the aforesaid decision and, therefore, this revision application deserves to be dismissed. Rule is accordingly discharged with no order as to cost.

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\*\* PVR \*\*